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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 LFT 5 LLC,

10 Plaintiff,

11 v.

12 Samuel Rodriguez,

13 Defendant.
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No. CV-24-00060-TUC-SHR

Order Remanding Eviction Case

15 Plaintiff filed this case in Pima County Superior Court as a state action for eviction
16 after a trustee sale.¹ (Doc. 1-1 at 1.) On January 9, 2024, pro se Defendant filed a notice
17 of removal asserting this Court has subject-matter jurisdiction under 28 U.S.C. § 1331.
18 (Doc. 1 in Case No. 4:24-cv-00020-RCC.) After Plaintiff filed an “Expedited Motion to
19 Remand” (Doc. 8 in Case No. 4:24-cv-00020-RCC) and Defendant filed a response (Doc.
20 11 in Case No. 4:24-cv-00020-RCC), Judge Collins granted Plaintiff’s “Expedited Motion
21 to Remand” on January 18, 2024, because there was “no federal question raised in
22 Plaintiff’s Complaint” and “Defendant’s references to federal law in his notice of removal
23 cannot create a federal question that gives this Court jurisdiction” (Doc. 15 in Case No.
24 4:24-cv-00020-RCC).

25 Approximately two weeks later, Defendant filed a second Notice of Removal. (Doc.
26 1.) In this second Notice of Removal, Defendant asserts this Court has subject-matter
27 jurisdiction because there is a federal question based on 28 U.S.C § 2410(a)(5) and “Title
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¹The case number for the underlying state action at issue is C20235890.

1 26.” (Doc. 1 at 4–5.)

2 “[A] district court is under a duty to examine, on its own motion, whether a removed
3 case should be remanded to state court; the court need not wait for a motion to remand.”
4 *Raytheon Co. v. Alliant Techsystems, Inc.*, No. CIV 13-1048-TUC-CKJ, 2014 WL 29106,
5 at *1 (D. Ariz. Jan. 3, 2014) (citing *Kattalla Co. v. Ronex*, 186 F. 30 (9th Cir. 1911) (district
6 court may, on its own motion, decline to exercise jurisdiction over removed action)). If at
7 any time before final judgment it appears the district court lacks subject matter jurisdiction
8 over a case removed to federal court, the case shall be remanded. 28 U.S.C. § 1447(c).

9 Federal courts are courts of limited jurisdiction; they have subject matter jurisdiction
10 only over the matters specifically authorized by Congress or the Constitution. *Kokkonen*
11 *v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). A party may remove an action from
12 state court only if the action could have originally been brought in the district
13 court. *Ramirez v. Fox Television Station, Inc.*, 998 F.2d 743, 747 (9th Cir. 1993); *see also*
14 28 U.S.C. § 1441(a) (“[A]ny civil action brought in a State court of which the district courts
15 of the United States have original jurisdiction, may be removed by the defendant or the
16 defendants, to the district court of the United States for the district and division embracing
17 the place where such action is pending.”) The removal statute is strictly construed against
18 removal jurisdiction and “[f]ederal jurisdiction must be rejected if there is any doubt as to
19 the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
20 1992).

21 “A case ‘arises under’ federal law . . . if ‘a well-pleaded complaint establishes that
22 federal law creates the cause of action or that the plaintiff’s right to relief necessarily
23 depends on resolution of a substantial question of federal law.’” *Proctor v. Vishay Intertech*
24 *nology Inc.*, 584 F.3d 1208, 1219 (9th Cir. 2009) (quoting *Empire Healthchoice Assurance,*
25 *Inc. v. McVeigh*, 547 U.S. 677, 689–90 (2006)). Federal question jurisdiction exists only
26 when a federal question is presented on the face of the plaintiff’s properly pleaded
27 complaint. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). “The rule makes the
28 plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive

1 reliance on state law.” *Id.*

2 Here, Defendant is attempting to remove this case to federal court based on federal
3 question jurisdiction. Based on Plaintiff’s claims and allegations in its Complaint, this a
4 special/forcible detainer action arising entirely under state law. *See* A.R.S. §§ 33-1485,
5 33-1377. Even if Defendant were to assert a counterclaim based on federal law, such a
6 counterclaim would not create a federal question for jurisdictional purposes. *See Takeda*
7 *v. Nw. Nat. Life Ins. Co.*, 765 F.2d 815, 821–22 (9th Cir. 1985) (holding federal question
8 jurisdiction does not arise from defenses or counterclaims alleged by defendant).

9 In sum, Plaintiff’s claim is purely a state-law action, and Defendant cannot create
10 federal question jurisdiction by filing federal defenses or counterclaims. Due to the lack
11 of subject matter jurisdiction, this Court must remand.² Defendant’s efforts to change the
12 statute he relies on in this subsequent attempt at removal are futile, and any future attempts
13 would suffer the same fate.

14 This Court has already rejected Plaintiff’s previous attempt to remove the
15 underlying state law case to this Court for the same reasons. Defendant is warned if he
16 files another removal in C20235890, without good cause, he may be sanctioned.³ *See* 28
17 U.S.C. § 1927 (“Any attorney or other person admitted to conduct cases in any court of the
18 United States or any Territory thereof who so multiplies the proceedings in any case
19 unreasonably and vexatiously may be required by the court to satisfy personally the excess
20 costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.”); *Myers*
21 *v. Freescale Semiconductor Inc.*, No. CV-19-05243-PHX-MTL, 2020 WL 4530468, at *1
22 (D. Ariz. Aug. 6, 2020), *aff’d*, No. 20-16592, 2022 WL 266638 (9th Cir. Jan. 26, 2022)
23 (noting § 1927 sanctions may be imposed on a pro se party if there is bad faith).

24 Accordingly,

25 **IT IS ORDERED** the Clerk of Court shall remand this action to Pima County

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27 ²Defendant did not seek removal based on diversity jurisdiction. To the extent he
intended to do so, the Court finds there is no basis for an exercise of such jurisdiction.

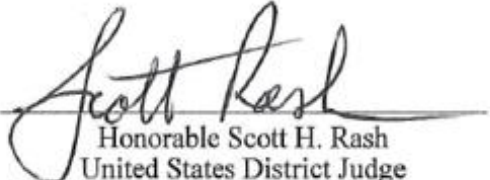
28 ³Even though pro se filings are construed liberally in the Ninth Circuit, *Hebbe v.*
Pliler, 627 F.3d 338, 342 (9th Cir. 2010), the Court may determine fees or costs become
appropriate if Plaintiff continues to try to remove this case with no legal support.

1 **Superior Court for all further matters.** This Order is effective immediately, such that
2 any pending actions, orders, or writs, may proceed immediately.

3 **IT IS FURTHER ORDERED** Defendant's Application for leave to Proceed In
4 Forma Pauperis (Doc. 3.) is **DENIED AS MOOT.**

5 Dated this 7th day of February, 2024.

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Honorable Scott H. Rash
United States District Judge